United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

77-6064

IN THE

UNITED STATES COURT OF APPEALS
For The Second Circuit

B

P/S

NO.77-6064

FRANK and ANNA SILVERMAN,

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

BRIEF FOR APPELLANTS

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IN THE

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FOR THE SECOND CIRCUIT

Docket No.77-6064

FRANK and ANNA SILVERMAN,

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANTS

QUESTION PRESENTED

1. Whether the denial by the Court below of appellants order to show cause to vacate the appellee's levy of attachment on the social security funds in the checking and savings accounts of the appellants' in the Roosevelt Savings Bank, in violation of 42 U.S.C.A.Section 407 of the Social Security Law, is clearly erroneous?

PRELIMINARY STATEMENT

Frank and Anna Silverman, appeal from an order of dismissal of Honorable Thomas C.Platt, United States District Judge, Eastern District of New York, filed on April 5,1977, denying the petitioners-appellants motion to vacate the levy of attachment made by respondent-appellee, on the social security benefit funds on deposit with the Roosevelt Savings Bank, on the checking account and the savings accounts of appellants, in violation of 42 U.S.C.A.Section 407 of the Social Security Law.

FACTS

The Petitioners-Appellants are both over the age of 65 years of age and have been receiving social security benefit payments for more than 5 years.

That upon the receipt of such benefit payments said payments are deposited in the Roosevelt savings bank either in the savings accounts or in the checking account.

On January 3,1977, a check was received by appellants in the sum of $92.10, which was deposited in the checking account January 13,1977.(R-12).

On February 3,1977, a check was received by appellants in the sum of $92.10, which was deposited in the checking account on February 14,1977.(R-12)

On March 15,1977, a transfer of funds from the savings account into the checking account of the sum of $100.00 was made. (R-12).

That the funds both in the checking and savings accounts were funds received from social security benefit payments.

That the funds that are on deposit in the Roosevelt Savings Bank were used by appellants for various necessaries during the month. (See R-5,R-6).

That those social security benefit payments that are received by appellants are needed and used to maintain self respect and dignity in the community, as well as life itself.

The appellee was advised of those facts and yet said appellee was indiferent towards appellants.(See R-13,R-14).

The levy made by appellee on the appellants'accounts caused great hardship and denied to the appellants the necessaries to maintain life, a fact that was well known to the appellee.

The appellants relied on those social security benefit payments towards their support.

Thal all of the aforesaid facts were brought to the attention of the Court below.

On April 1,1977, Judge Platt, issued an order of dismissal entered by the Court below on April 5,1977,denying appellants's order to show cause to vacate the appellee's levy of attachment on the checking account and the savings accounts of the appellants on deposit with the Roosevelt Savings Bank.

Additional facts relevant to the issues raised in this appeal will be discussed under those points.

POINT I

The Dismissal Order by the Court below of Petitioners-Appellants Order to Show Cause to Vacate the Respondent-Appellee's Levy of Attchment of the Checking and Savings Accounts of Petitioners-Appellants On Deposit with the Roosevelt Savings Bank was clearly erroneous.

The Court below failed to render a written opinion upon which the order of dismissal was based.(See R-28)

The petitioners-appellants brought by way of an order to show cause in the Court below to vacate a levy of attachment made by respondent-appellee, on a checking account and two savings accounts with the Roosevelt Savings Bank, pursuant to 42 U.S.C.A. Section 407 of the Social Security Law,which reads as follows:

> " The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or right existing under this subchapter shall be subject to execution,levy,attachment,garnishment,or other legal process, or to the operation of any bankruptcy or insolvency law."

Section 407 is clear and exact in its meaning, in that the social security benefit payments received or to be received are not subject to attachment,levy,garnishment or other legal process.

In Brown v Brown,266 N.E.2d.852, the Court said: Intent behind exemption of this section is to protect benefits recipient receive and those dependent on him from claims of creditors.

It appears that the purpose of Section 407 was to protect recipients who receive social security benefits from creditors reach. (See Dept of Welfare v Hedrick,1964,126 N.W.28,22 Wis.2d.382)

The concept at the time of the enactment of the Public Health and Welfare Law, commonly known as the social security, to provide some sort of monthly benefit payment to those reaching the age of 65, who either voluntarily or involunarily was forced to retire from employment.

I was because of that concept the Congress of the United States enacted 42 U.S.C.A tion 407, exempting those benefits from execution, levy,attachment,garnishment,or other legal process.

That as a result of said prohibition, the United States Supreme Court, on January 10,1973, in the Philpott v Essex County Welfare Board, 409 U.S. 413, made the following rulings,to wit:- on page 415-

> " (N)one of the moneys paid or payable under this subchapter shall be subject to execution,levy,attachment,garnishment or other legal process...."

The said Court further stated on page 417;

> " But section 407 does not refer to any "claims of creditors" it imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to include all claimants, including a State."

It is abundantly clear as above indicated, that social security benefit payments paid to recipients are exempt from levy,attachment,execution,garnishment or other legal process.

The petitioners-appellants have shown to the Court below that all of the deposits and funds in the Roosevelt Savings Bank were the proceeds of social security benefit payments and that those funds were used for medical and other necessaries during each month by way of checks that were issued by the petitioners-appellants.

Respondent-Appellee's counsel on the oral argument in opposition for the stay in the Court below, March 28, 1977, conceeded that the funds in the account of the petitoners-appellants were the proceeds of of social security benefit payments received by the petitioners-appellants under the Social Security Law.

If the order of dismissal made in the Court below in this case is not reversed, the many other social security benefit recipients' funds will be in danger of attachment and thus deprive them of the funds that the Congress of the United States intended to be free from attachment as embodied in 42 U.S.C.A. Section 407.

This case is one of extreme importance in the light of the issues involved, and if the decision made by the Court below in this case, is not reversed it will result in an improper, unjust decision in this case and will in fact nullify the decision of the Supreme Court United States of the case of Philpott v Essex County Welfare Board, 409 U.S. 413, Decided January 10, 1973.

CONCLUSION

For all of the aforesaid reasons, the order of dismissal made by the Court below in this case should be reversed and the levy of attachment made on the accounts of the petitioners-appellants on deposit with the Roosevelt Savings Bank be vacated by this Court.

RESPECTFULLY SUBMITTED

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

FRANK L.SILVERMAN, being duly sworn, deposes and says; that I am over the age of twenty-one years of age and reside in the City of New York.

That on the 26th day of May,1977, I mailed a copy of the brief of the petitioners,on the respondent by mailing same in a sealed envelope,with postage prepaid first class, properly addressed as follows:

Myron C.Baum
Acting Assistant Attorney General Tax Division
United States Department of Justice
Washington, D.C.20530
Att.Gilbert E.Andrews,Esq.

Sworn to before me this
26th day of May,1977.

Frank L. Silverman
FRANK L.SILVERMAN

ARTHUR B. SHEERAN
Notary Public State of New York
No. [illegible]014
Qualified in Kings County
Commission Expires March 30, 1978

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V.

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